

Bhd. & Ors. [1989] 1 MLJ 47, when I had held that to constitute a proper demand, the burden is on the plaintiff to prove that the AR card is returned duly acknowledged.

Likewise, as this burden has not been discharged by the plaintiff, I consider that the plaintiff has not been able to establish a cause of action against the 2nd defendant under the guarantee and on that finding the plaintiff's claim must fail.

Lastly, I come to the plaintiff's contention that the written demand as stipulated in clause 1 of the guarantee at AB4 must be read together with clause 8 at AB5, the effect of which is to make such demand unnecessary as the defendant has waived the requirement of demand.

Here again, I see no merits to the plaintiff's contention, as clause 8 is limited to specific waivers of demand covering the following matters:

- (1) Refusal for further credit to the borrowers.
- (2) To terminate the facility.
- (3) To grant time or indulgence.
- (4) To accelerate maturity of obligation, that is, to shorten period of availability of credit or renew credit.

Clause 8 does not apply to the waiver of the demand to pay which has been expressly agreed to in clause 1 and since the guarantee is the plaintiff's own document, they cannot now say that the guarantee is ambiguous as a means of avoiding their primary obligation under the guarantee.

As the plaintiff has failed to establish a cause of action against the 2nd defendant, I accordingly dismiss their claim with costs.

a

CHAI THEN SONG

v.

b

MALAYAN UNITED FINANCE BHD.

HIGH COURT, JOHOR BAHRU

DATO' JAMES FOONG J

[CIVIL APPEAL NO. 11-10 OF 1989]

5 APRIL 1993

c

CONTRACT: Deed of Guarantee - Relevant particulars left blank at the time of execution - Particulars subsequently filled in - Whether Deed of Guarantee valid.

d

The appellant, in order to induce his client to purchase a tractor, stood as guarantor on a hire purchase agreement entered into between his client and the respondent. The purchaser defaulted on his installments and the respondent repossessed the tractor, sold it and claimed the balance due from the appellant pursuant to the Deed of Guarantee.

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It was not disputed that the Deed of Guarantee, when executed, was a printed form with relevant particulars left blank which were subsequently filled in. The appellant disputed the validity of the Deed of Guarantee on the grounds that the fundamental elements of the formation of a contract had not been fulfilled.

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The trial Magistrate found in favour of the respondent and the appellant appealed.

Held:

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[1] A person who chose to be careless, or not bothered to find out the contents of a document, or who relied completely upon others to complete the same, is responsible for his own actions and he is prevented from denying that the contents of the document do not bind him.

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[2] The appellant never denied that he executed the Deed of Guarantee nor did he deny that the terms therein were not the terms agreed upon by him. Though the relevant particulars of the Hire Purchase Agreement and the Deed of Guarantee was at the time of execution left blank, as the appellant permitted others to fill in the particulars of both these documents, he must accept full responsibility for his actions.

[Appeal dismissed with costs].

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Cases referred to:

Saunders v. Angelia Building Society [1971] AC 1004 (**fol**)

United Dominions Trust Ltd. v. Western B.S. Romany [1976] 1 QB 513 (**fol**)

East West UMI Insurance Bhd. v. Low Boon Thong & Ors. (para 1566 December issue, *Mallal's Monthly Digest* 1992) (**refd**)

UMW Industries (1985) v. Kamaruddin bin Abdullah & Anor. [1989] 2 CLJ 1278 (**fol**)

Legislation referred to:

Hire Purchase Act 1967, ss. 4A, 4B, 4C & 4D

For the appellant - P. Suppiah; M/s. P. Suppiah & Co.

For the respondent - Ng Chew Hor; M/s. Leng & Co.

JUDGMENT**James Foong J:**

This is an appeal from the decision of the learned Magistrate in Johor Bahru where he gave judgment against the appellant for the sum of RM18,625.31 as claimed by the respondent.

The facts of this case are rather simple and not in dispute. The appellant was a sales executive with The East Asiatic Co. (Malaysia) Bhd. which at the material time sells John Deere tractors. He secured a purchaser, the 1st defendant, for the purchase of one John Deere tractor. In order to complete the sale he arranged hire purchase financing with the respondent for the 1st defendant which culminated with a Hire Purchase Agreement (P1) between the parties. In order to 'convince' the 1st defendant to purchase the said tractor, the appellant executed a Deed of Guarantee for the due performance of the 1st defendant of the terms stated in the Hire Purchase Agreement.

It is not in dispute between the parties that both the Hire Purchase Agreement and the Deed of Guarantee were signed by the 1st defendant and the appellant respectively on or before 11 January 1984. It is also not in dispute that when the Deed of Guarantee was executed by the appellant, it was a printed form with relevant particulars left blank.

When the hire purchase sum was to be released by the respondent, under this hire purchase transaction with the 1st defendant on 15 August 1984, the relevant particulars on both the Hire Purchase Agreement and the

a Deed of Guarantee were completed and the dates affixed thereto were 15 August 1984 respectively.

The 1st defendant defaulted to pay the hire purchase installments as stipulated under the Hire Purchase Agreement leading to the repossession of the said tractor. The said tractor was subsequently sold and the amount found due by the 1st defendant to the respondent was RM18,096.31 as claimed.

The 1st defendant defaulted in appearance and, judgment was taken against him by the respondent.

c The appellant disputed the respondent's claim and basically his defence was that at the material time when he executed the Deed of Guarantee the relevant particulars were not typed therein. The appellant also contended that the said tractor after being repossessed was sold at below market value and that, he was not informed of the date of actual sale.

The learned Magistrate rightly decided that there was only one issue to be tried and that was, on the validity of the Deed of Guarantee with relevant parts left blank when the appellant executed thereon. The other allegation of the appellant in his statement of defence was not seriously challenged by the appellant, after relevant evidence on this matter was tendered by the respondent at trial.

f On this appeal before me, the appellant besides taking on the issue of the validity of the Deed of Guarantee also argued that the respondent has failed to comply with s. 4A, 4B, 4C and 4D of the Hire Purchase Act 1967. These sections relate to the requirements that the Hire Purchase Agreement to be in writing, that it must be signed and, that the contents therein must satisfy certain essential elements. It is rather embarrassing to the appellant that in the submission of the respondent's Counsel during this appeal, it was revealed that the aforesaid sections only came into force on 1 June 1992, as the aforesaid sections were inserted under an amendment act bearing number A813. Such being the case, there is no necessity to deal with this point as the transaction in this case took place in 1984.

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The appellant's Counsel seems to base his argument on the issue of the validity of the Deed of Guarantee executed without the relevant particulars inserted at the material time of execution, on the basic principle that the fundamental elements on the formation of a contract have not been fulfilled. He also argued that since the appellant was sued on a guarantee, the Hire Purchase Agreement being the principle document also bears no relevant particulars when executed. Contention of past consideration on the Deed of Guarantee was also raised relating to this issue.

I shall first of all deal with the question of past consideration. From the evidence recorded, I do not find any trace of past consideration in this transaction. The opening sentence of the Deed of Guarantee (P4) expressly states as follows:

In consideration of your entering into the Hire Purchase Agreement No. JB/GEN(D)/7204 dated 15 August 1984 between yourself and Kallipeh a/l Ramasamy of 26'0' Block Kekayaan Estate, Paloh, I, the undersigned hereby jointly and severally guarantee the due and punctual payment by the Hirers of all sums which may become due to you under or arising out of the said Hire Purchase Agreement...

Eventhough the relevant parts relating to the name of the hirer, the Hire Purchase Agreement number and date thereof were admitted by the respondent to be blank when the appellant executed on this document, the fact remains that there was a hire purchase agreement intended to be executed between the 1st defendant and the respondent at the material time. The consideration of "your entering in Hire Purchase Agreement" with the hirer was actually there and, did take place when the appellant executed the Deed of Guarantee. Therefore there can be no question of past consideration arising.

Now turning to the fundamental point on this issue of the appellant executing on a Deed of Guarantee with relevant parts therein left blank and, where this similarly applies to the Hire Purchase Agreement the learned Magistrate relied on the case of *Saunders v. Angelia Building Society* [1971] AC 1004. This case is better known as *Gallie v. Lee*, a House of Lords decision which held that:

- a* a person who signs a document and parts with it so that it may come into other hands, has a responsibility, that of a normal man of prudence, to take care what he signs, which, if neglected, prevents him from denying his liability under the document according to its tenor.
- b* Lord Wilberforce in his judgment on the afore-said cases went further to say as follows:

I would add that the onus of proof in this matter rests upon him (that is) to prove that he acted carefully, and not upon the 3rd party to prove the contrary.
- c* In *Gallie v. Lee*, the plaintiff alleged that she executed a deed of assignment of her house instead of some other form of arrangements. When the Deed of Assignment was presented to her for execution, the contents therein were completed but she did not read the said document due to the fact she broke her glasses. After careful consideration on the application of the principle of *non est factum*, the House of Lords held that such plea is not available in the circumstances of this case.
- e* A case more similar to the facts of our case is *United Dominions Trust Ltd. v. Western B. S. Romany* [1976] 1 Q.B. 513 which the learned Magistrate also relied upon in his judgment. In this case, a purchaser bought a car from a dealer. The purchaser needed hire purchase finance which was arranged by the dealer.
- f* The purchaser executed a standard kind of document with the relevant particulars left blank. The dealer subsequently inserted an amount higher than was required by the purchaser and, the document was not that of a hire purchase transaction but instead, it was for a loan. The purchaser when he obtained a copy of the loan document realised the incorrectness but did nothing about it. When the finance company brought an action against the purchaser for default of installment payments, the purchaser argued that there was no *consensus ad idem* in the purported contract between the parties; that the defendant had not intended this document to be filled up in the way in which it was filled up and therefore, the document did not represent his true intention thus, there was no contract in law and, the finance company has no right to recover by virtue of such a non existent contract.
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The Court of Appeal rejected the aforesaid argument and, adopted the principle as laid down in *Gallie v. Lee*. Lord Scarman in his judgment had this to say:

I cannot accept Mr. Eady's submission that there is great difference between signing blind a completed document the contents of which one has not read and signing a printed document, as here, with the blanks for the particular transaction not filled in but agreeing to or authorising, another to fill in those blanks and the figures later. It seems to me such a man does make the document that he is signing his document; he takes responsibility for it; and he takes the chance of a fraudulent filling in of the blanks. True, it is technically a different situation from the signing of a completed document; but I think it to be a distinction without a substantial difference. It appears to me that the plea of *non est factum* is just not available to such a man; he cannot be heard to say in those circumstances that there is no *consensus ad idem*.

The aforesaid principles of law seem to have been followed in our High Court by the decisions of Justice Dato' Siti Norma in *East West UMI Insurance Bhd. v. Low Boon Thong & Ors.* (para 1566 December issue, Mallal's Monthly Digest 1992) and *UMW Industries (1985) v. Kamaruddin bin Abdullah & Anor.* [1989] 2 CLJ 1278.

In *UMW Industries 1985*, Justice Dato' Siti Norma had this to say:

As for the 2nd defendant's intention that he only signed blank guarantee forms, he has only himself to blame as the plea of *non est factum* does not work in favour of a person who has shown himself to be negligent.

I find the aforesaid authorities laid down sound principles of law on persons executing blank documents. A person who chose to be careless, or not bothered to find out the contents therein, or relied completely upon others to complete the same, is responsible for his own actions and, he is prevented from denying the contents therein do not bind him.

In this case, the appellant never denied that he executed the Deed of Guarantee nor, disputed to the terms therein as not being the terms agreed upon by him. In fact he admitted expressly that he signed the Deed of Guarantee and, knew that it was a Deed of Guarantee. He did so to "convince" the 1st

a defendant to buy the tractor. The terms and conditions in the Hire Purchase Agreement was never disputed by the appellant to be incorrect or, otherwise than those tendered by the appellant himself on behalf of the 1st defendant when he applied for such facilities to the respondent. Both the hire purchase agreement and the Deed of Guarantee were executed at the same time and, there was no dispute by the 1st defendant on the contents of the Hire Purchase Agreement. Though the relevant particulars of the Hire Purchase Agreement was then left blank, this document was at the material time part and parcel of the Deed of Guarantee and, if the appellant permitted others to fill up the particulars of both these documents he has to accept full responsibilities for such actions.

To sum up on this point, it is good to repeat Lord Peason's judgment in *Gallie v. Lee* of an example of a busy managing director who has a pile of documents to be signed in a few minutes before the next meeting and, his secretary arranges them for maximum speed with only the spaces for signature exposed, and the managing director signs them "blind".
d To this Lord Peason comments that he may be exercising a wise economy of time and energy:

but the person who signs the documents in this way ought to be held bound by them, and ought not be entitled to avoid liability so as to shift the burden of loss on an innocent third party. The whole object of having documents signed by him is that he makes them his documents and takes responsibility for them.

Based on the aforesaid, I find that the learned Magistrate has not erred in applying the correct principles to the facts of this case in his judgment and, as such, I dismiss this appeal with costs.

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